

MINUTES OF FEBRUARY 18, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 18, 2013, at 7:00 p.m. in the County Council Chambers, County Administrative Building, Georgetown, Delaware.

The meeting was called to order at 7:05 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with Mr. James Sharp – Assistant County Attorney, and staff members, Mrs. Susan Isaacs – Chief Zoning Inspector, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes of January 28, 2013 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Finding of Facts for January 28, 2013. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

PUBLIC HEARINGS

Case No. 11156 – Ronald Wroblewski and Lori Wroblewski – north of Route 54 (Lighthouse Road) east of Laws Point Road, being Lot 64, Block E, within Swann Keys development. (Tax Map I.D. 5-33-12.16-267.00)

An application for a variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Ronald Wroblewski was sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicants and stated that the Applicants are requesting a variance of 5 feet from the 10 feet side yard setback requirement for a proposed manufactured home and a proposed porch. Mr. Fuqua stated that the Property is located within the Swann Keys community; that the Applicants have owned the Property for six (6) years; that there is a single-wide manufactured home on the lot; that the Applicants want to replace the unit with a 24 feet by 60 feet manufactured home; that the proposed dwelling will also have a front porch and an open rear deck; that the proposed decks can encroach; that the unit will be equipped with a Geothermal system for heating and air conditioning; that the lot is only forty (40) feet wide creating a uniqueness to the lot; that the width of the lot makes it difficult to improve; that the variance will enable reasonable use of the Property as it will allow the Applicants to upgrade their home; that the variance will not alter the essential character of the neighborhood as there have been other similar variances granted nearby; that the proposed dwelling is in conformity with other similar homes in the

neighborhood; that the existing manufactured home is the smallest in the area; that the neighbor's house on the encroaching side is not parallel to the lot; that the neighbor's lot is pie-shaped so the variance will have a minimal impact on that lot; that the difficulty was not created by the Applicants; and that the variance is the minimum variance to afford relief. Mr. Fuqua submitted exhibits for the Board to review. Mr. Wroblewski, under oath, confirmed the statements made by Mr. Fuqua.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11156 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the lot size;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11157 – Villages at Herring Creek Development – south of Road 279 (Camp Arrowhead Road) south of Jennifer Way, being Lot 125 within Villages at Herring Creek development. (Tax Map I.D. 2-34-12.00-321.00)

An application for variances from the front yard and rear yard setback requirements.

Mrs. Isaacs presented the case. Ken Christenbury, with Axiom Engineering was sworn in and testified requesting a variance of 6 feet from the 30 feet front yard setback requirement and a variance of 10 feet from the 20 feet rear yard setback requirement for a proposed dwelling.

Mr. Sharp advised the Board that he has represented Mr. Christenbury in the past and, if the Board believed, that a conflict of interest existed, the Board should refer any questions to Vince Robertson, Esquire.

Mr. Christenbury testified that the Property is identified as Lot 125 in the community; that the Applicant has developed the community over the past five (5) years; that the community

was originally planned to be developed in two phases (Phase 1 and Phase 2); that the Property being developed as Phase 2 was planned originally for the operation of wastewater treatment and disposal area for Phase 1; that the Sussex County Engineering Department later extended central sewer to the project; that a force main had to be installed and the placement of the force main has created an irregular shaped Lot 125; that Lot 125 is located at the end of a dead end road; that the lot is very narrow; that Schell Brothers builds homes for the community; that the style homes Schell Brothers offers will not fit on a lot this size; that Schell Brothers would have to build a customized dwelling to fit the lot; that a custom designed house could price the dwelling out of the neighborhood and lead to a house not in character with the neighborhood; that the variances will allow for a dwelling that is in character of the neighborhood; that a 20 feet forested buffer is adjacent to the rear of the Property; that there would be no hardship on any other lots in the community if the variance were granted; and that the variance is the minimum necessary to afford relief. Mr. Christenbury submitted pictures and exhibits in support of the Application.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11157 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11158 – Rhonda Melson – northeast of Road 62 (Whaley's Road) 2,800 feet northwest of Road 66 (Pepperbox Road). (Tax Map I.D. 3-33-5.00-2.01)

An application for a special use exception to operate a daycare center and a dog kennel.

Mrs. Isaacs presented the case. Rhonda Melson was sworn in and testified requesting a special use exception to operate a daycare center and a dog kennel. Ms. Melson testified that she has had a daycare in her home for thirteen (13) years; that she has five (5) dogs on the Property; that only one (1) dog lives outside the home; that she was not aware she needed a special use

exception for her daycare or the number of dogs she cared for; that the state representative for her daycare license had concerns for the number of animals on the Property and that is when they discovered the special use exception was needed for both the daycare and the dog kennel; that she cares for eight (8) children some of whom are part-time; that her hours of operation are Monday through Friday from 6:00 a.m. to 6:00 p.m.; that there is adequate parking and a fenced-in play area; that the Applicant's family lives nearby; that there are not many others in the neighborhood; and that there is no adverse effect to the neighborhood.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception No. 11158 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11159 – Samuel Pierce & Doris Pierce – south of Route 54 (Lighthouse Road) east of Keenwik Road, being Lot 11, Block G, Section 3 within Keenwik development. (Tax Map I.D. 5-33-20.09-71.00)

An application for a variance from the side yard and front yard setback requirements.

Mrs. Isaacs presented the case. Samuel Pierce and Doris Pierce were sworn in and testified requesting a variance of 5 feet from the 10 feet side yard setback requirement for an existing attached storage shed and a variance of 5 feet from the 30 feet front yard setback requirement for an existing dwelling. Mr. Pierce testified that the Applicants sought the variances for a storage shed attached to his dwelling; that the attached shed has vinyl siding to match the dwelling; that the dwelling was built in 1999 and was designed by an architect; that a building permit and a Certificate of Compliance were issued for the dwelling; and that the development has a twenty five (25) feet front yard setback requirement. Mrs. Pierce testified that they were not aware of the encroachment for the dwelling until they applied for the variance for the attached shed; that they were not aware the Sussex County restrictions superseded the Keenwik development's restrictions; and that to move the shed into compliance would be a hardship. Mr. Pierce testified that the variances will enable reasonable use of the Property; that the difficulty was not created by the Applicants; that the variances will not alter the character of the neighborhood; that the variances are not detrimental to the public welfare; and that the

variances are the minimum variances to afford relief. Mr. and Mrs. Pierce submitted pictures to support the Application.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11159 for the requested variances based on the record made at the public hearings and for the following reasons:

1. The Property is only fifty (50) feet wide making it unique in size;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood since the dwelling has been in its current location since 1999 after Sussex County issued a certificate of compliance; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 11160 – Gloria Pia – south of Route 54 (Lighthouse Road) east of Roosevelt Avenue, being Lot 21, Block 7 within Cape Windsor development. (Tax Map I.D. 5-33-20.18-14.00)

An application for a variance from the side yard and rear yard setback requirements.

Mrs. Isaacs presented the case and stated that there are revisions to the variance request and that the variance request of 8 feet for the air conditioning unit is not needed and the 5.2 feet variance request is now a 5.8 feet variance request from the 10 foot side yard setback requirement. Richard Pia was sworn in and testified requesting a variance of 5.8 feet from the 10 foot side yard setback requirement for a proposed dwelling, cantilevered second floor stairs, fireplace & chimney and a variance of 4.8 feet from the 20 foot rear yard setback requirement for a proposed dwelling. Mr. Pia testified that the Property is located within the Cape Windsor development; that the Applicant has experienced problems with parking in the neighborhood; that he plans to replace the existing single floor manufactured home with a two (2) story dwelling; that the location of the proposed dwelling will be the same distance from the side yard property line as the existing manufactured home; that other homes in the development are five (5) feet from the side yard property line; that the proposed dwelling design will allow for parking

three (3) to four (4) cars on the lot; that the Applicant's family is getting larger and more room is needed; that the variances will not alter the character of the neighborhood; that the second floor of the dwelling will be the main living area; that the proposed dwelling will be located 15.2 feet from the bulkhead in the rear yard; that the variances needed are the minimum variances to afford relief. Mr. Pia submitted aerial pictures of the Property to the Board.

The Board found that no parties appeared in support of or in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11160 for the requested variances based on the record made at the public hearings and for the following reasons:

1. The Property is only fifty (50) feet wide which makes it unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11161 – James Martin, Jr. and Darlene Martin – north of Road 58B (Bayville Road) east of Oliver Drive, being Lot Th-33 within Bayview Landing development. (Tax Map I.D. 5-33-13.00-53.00)

An application for a variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. James Martin and John Nuttle were sworn in and testified requesting a 1 foot variance from the 20 feet rear yard setback requirement for a proposed screen porch. Mr. Martin testified that the Applicants propose to build a screen porch on the rear of their dwelling; that the building restriction line creates a shallow rear yard; that the difficulty was

not created by the Applicants; that the building line was set by the builder; that the proposed porch looks like other porches in the neighborhood; that the Applicants need the variance to allow for a railing on the steps to the porch; that the variance will not alter the character of the neighborhood; and that the Homeowners Association supports the Application.

Mr. Nuttle testified that the handrail actually creates the encroachment; and that the warranty will be compromised on the handrail by the manufacturer if it is altered in anyway.

Mr. Martin testified that the handrail is important for his safety concerns for his family and that not having the handrail would create a hardship. Mr. Martin submitted exhibits in support of the Application to the Board.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11161 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the limited space on the lot;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. The variance is not detrimental to the public welfare; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11162 – Robin Bunch and Sharon Toner – north of Route 54 (Lighthouse Road) west of Blue Teal Road, being Lot 45, Block C within Swann Keys development. (Tax Map I.D. 1-33-16.00-69.00)

An application for variances from the side yard setback requirement.

Mrs. Isaacs presented the case. Robin Bunch and Sharon Toner were sworn in to testify about the Application. Ray Tomasetti, Esquire, presented the case to the Board on behalf of the Applicants and stated that the Applicants are requesting a variance of 4 feet from the 10 feet side yard setback requirement for a proposed manufactured home, a variance of 4 feet from the 10 feet side yard setback requirement for a manufactured home and a variance of 7 feet from the 10 feet side yard setback requirement for steps and an air conditioning unit. Mr. Tomasetti stated that the existing manufactured home was lost due to flooding from the storm "Sandy"; that the Applicants intend to build a new dwelling on the lot; that the lot is located within the Swann Keys development; that the lot is only forty (40) feet wide; that a porch will be located on the rear of the Property; that the Property is unique; that the variances will not alter the essential character of the neighborhood; that the unit will be elevated to prevent future flood damage; that the Applicants want to place the air conditioning unit on the north side of the Property; that the steps will be on the south side of the lot; that the variances are the minimum variances to afford relief; and that the neighbor supports the Application. Mr. Tomasetti submitted pictures in support of the Application.

Ms. Bunch testified that the Applicants' builder advised the Applicants that the air conditioning unit should be placed at the center of a home for better airflow. Ms. Bunch, under oath, confirmed the statements made by Mr. Tomasetti.

The Board found that no parties appeared in support of or in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11162 for the requested variances with the stipulation that the air conditioning unit be placed on the south side of the Property in compliance with the setback requirements based on the record made at the public hearings and for the following reasons:

1. The Property is unique in size;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

The Board found that the Applicants failed to meet the standards for granting a variance of the side yard setback for the placement of an air conditioning unit because the air conditioning unit could be placed in compliance with the Sussex County Zoning Code.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated and with the stipulation that the air conditioning unit be placed on the south side of the Property in compliance with the setback requirements.** Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11163 – Lindsay Cannon / Little Einsteins Preschool – northeast of Route 113 (DuPont Boulevard) 900 feet southeast of Betts Pond Road. (Tax Map I.D. 1-33-16.00-69.00)

An application for a special use exception to operate a daycare center.

Mrs. Isaacs presented the case. Lindsay Cannon was sworn in and testified requesting a special use exception to operate a daycare center. Ms. Cannon testified that she currently has a daycare in the Georgetown area and cares for twenty-eight (28) children at that location; that the Georgetown daycare opened in 2008 with only twelve (12) children and has expanded since then; that the proposed Millsboro center will allow her to care for more children; that she currently has to turn families away; that the Property is zoned Commercial; that she will have five (5) additional employees and care for approximately thirty (30) additional children from ages two (2) to five (5); that her hours of operation will be Monday through Friday from 7:00 a.m. to 5:00 p.m.; that there is adequate parking available as there are approximately thirty (30) parking spaces; that her business occupies two (2) units in a five (5) unit commercial building; that she has all of her State agency approvals; that the nearby properties are commercial; and that the use will not adversely affect the surrounding properties.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11163 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

OLD BUSINESS

Case No. 11155 – 26 Centre, LLC – northeast corner of Route 113 (DuPont Boulevard) and Cricket Street. (Tax Map I.D. 2-33-5.00-166.01)

An application for a special use exception to place a billboard and a variance from the minimum side yard setback, the maximum square footage, maximum height requirement, and a variance from the setback requirement from a dwelling.

The Board discussed the case which has been tabled since February 4, 2013.

Mr. Rickard stated that he would move that the Board recommend denial of Special Use Exception and Variance Application No. 11155 for the requested special use exception and the requested variances based on the record made at the public hearing because the proposed billboard will substantially adversely affect the uses of adjacent and neighboring properties, and since the difficulty has been created by the Applicant.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried that the **special use exception and variances be denied for the reasons stated**. Motion carried 4 - 1.

The vote by roll call: Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – nay, Mr. Rickard – yea, and Mr. Callaway – yea.

Meeting Adjourned 8:50 p.m.